



1997 SENATE BILL 338

November 4, 1997 - Introduced by Senators WEEDEN, FARROW, SCHULTZ and COWLES, cosponsored by Representatives SERATTI, KREIBICH, SYKORA, VRAKAS, STASKUNAS, SKINDRUD, PLOUFF, SCHAFER, HANSON, LA FAVE, WALKER, ROBSON, POWERS, MUSSER, GUNDERSON, GOETSCH, ZUKOWSKI, LAZICH and WARD. Referred to Committee on Utility Regulation.

1 **AN ACT** *to repeal* 196.59, 196.795 (5) (dr), 196.795 (5) (q) 2. a., 196.795 (5) (q) 2.
2 b., 196.795 (5) (q) 2. c., 196.795 (5) (q) 3. and 196.795 (7) (a) 2.; *to renumber and*
3 **amend** 196.795 (5) (q) 2. (intro.); *to amend* 70.112 (4), 196.374 (1), 196.52 (3)
4 (a), 196.52 (3) (b) 1., 196.52 (3) (c) 1., 196.52 (3) (c) 2., 196.52 (4) (a), 196.795 (1)
5 (b), 196.795 (5) (f), 196.795 (5) (q) 1. (intro.), 196.795 (7) (a) 3., 196.795 (9m),
6 198.12 (5) and 198.12 (6); and *to create* 196.035, 196.52 (3) (am) 1. and 196.52
7 (3) (d) of the statutes; **relating to:** nonutility activities by public utilities and
8 public utility affiliates, subsidies between utility and nonutility affiliates,
9 utility energy conservation programs and duties, granting rule-making
10 authority and providing a penalty.

Analysis by the Legislative Reference Bureau

Nonutility activities by public utilities and their affiliates

Under current law, public utilities in a holding company system may not provide any nonutility product or service in a manner that unfairly discriminates against any competing provider of the product or service. Gas and electric utilities are required to keep separate accounts to show any profit or loss resulting from the

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sale of appliances or other merchandise. The public service commission (PSC) may not take the profit or loss into consideration in arriving at any rate to be charged for service by the public utility.

This bill repeals these provisions and imposes the following restrictions on a public utility that is engaged in the production, transmission, delivery or furnishing of heat, light, power or natural gas to the public: 1) the public utility may not engage in an activity related to the sale or service of appliances; and 2) the public utility may perform energy conservation, plumbing, electrical, heating, ventilating, air conditioning or sheet metalworking contracting services only in or on real property in which the public utility has an ownership or leasehold interest or in or on real property, excluding an improvement, in which the public utility has an easement. However, the bill's restrictions do not apply to activities that are required under federal law or services that such a public utility provides to an affiliated interest pursuant to a contract approved by the PSC. In addition, such a public utility is required to engage in appliance work that is necessary to avoid endangering property or human health or life.

The bill also restricts the ability of affiliates to engage in certain nonutility activities. Under current law, certain contracts or arrangements between public utilities and affiliated interests may not be entered into without written approval from the PSC. Under this bill, if such a contract or arrangement involves an activity related to the sale or service of an appliance or the performance of energy conservation, plumbing, electrical, heating, ventilating, air conditioning or sheet metalworking contracting services, the PSC may approve the contract only if the activity or services are performed in or on real property in which the public utility has an ownership or leasehold interest or in or on real property, excluding an improvement, in which the public utility has an easement. Current law also provides that no nonutility activity of a public utility holding company or a nonutility affiliate may be materially subsidized by the consumers of the affiliated public utility. This bill amends this prohibition to prohibit any such subsidy, regardless of whether the subsidy is material.

Current law generally prohibits a public utility in a holding company system, a subsidiary of such a public utility or any joint venture that has such a public utility as a member or partner, from doing appliance service work or appliance retail sales, if the appliance would use, as its primary energy source, energy supplied by the public utility. Current law contains a number of exceptions from this provision, including exceptions for certain work done as part of certain energy conservation programs, work done in response to circumstances which reasonably appear to the public utility affiliate or its subsidiary to endanger human health or life or property, certain work performed by certain independent contractors who are not in the holding company system of the public utility, and certain work determined by the PSC not to be anticompetitive. This bill repeals all of these exceptions from the prohibition on appliance service work or retail sales, although the bill continues to allow work to be done on appliances that are located in facilities that are owned or operated by the public utility or its subsidiary.

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Also under current law, various requirements apply to the relationship between a public utility in a holding company system and the other companies in the system. This bill imposes a \$2,000 forfeiture against any company in such a system, including a public utility, that violates these requirements. Each day of violation is considered a separate violation for purposes of determining the amount of a forfeiture.

Energy conservation activities

Current law requires a public utility to spend at least 0.5% of its total annual operating revenues on programs designed to promote and accomplish energy conservation, except that the PSC may require a utility to spend an annual amount that is more or less than 0.5% of its annual operating revenues if, after notice and hearing, the PSC finds that the expenditure of such amount is in the public interest. The PSC may also prescribe all or part of any of these energy conservation programs. The PSC is required to authorize every utility to recover from the utility's ratepayers any prudent energy conservation expenditure authorized by the PSC. This bill provides that a utility or an affiliate of the utility may not provide energy conservation services to consumers. Instead, the energy conservation program of a public utility is required to promote energy conservation services provided by persons that are not public utilities or affiliated interests of public utilities.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 70.112 (4) of the statutes is amended to read:
2 70.112 (4) SPECIAL PROPERTY AND GROSS RECEIPTS TAXES OR LICENSE FEES. All
3 special property assessed under ss. 76.01 to 76.26 and property of any light, heat and
4 power company taxed under s. 76.28, telephone company, car line company, and
5 electric cooperative association that is used and useful in the operation of the
6 business of such company or association. If a general structure for which an
7 exemption is sought under this section is used and useful in part in the operation of
8 any public utility assessed under ss. 76.01 to 76.26 or of the business of any light,
9 heat and power company taxed under s. 76.28, telephone company, car line company
10 or electric cooperative association and in part for nonoperating purposes of the public
11 utility or company or association, that general structure shall be assessed for

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1 taxation under this chapter at the percentage of its full market value that fairly
2 measures and represents the extent of its use for nonoperating purposes. Nothing
3 provided in this subsection shall exclude any real estate or any property which is
4 separately accounted for under s. 196.59 from special assessments for local
5 improvements under s. 66.64.

6 **SECTION 2.** 196.035 of the statutes is created to read:

7 **196.035 Certain nonutility activities and services. (1) DEFINITIONS.** In
8 this section:

9 (a) "Affiliated interest" has the meaning given in s. 196.52 (1).

10 (b) "Appliance" has the meaning given in s. 196.795 (1) (b).

11 (c) "Public utility" means a public utility that is engaged in the production,
12 transmission, delivery or furnishing of heat, light, power or natural gas either
13 directly or indirectly to or for the use of the public.

14 **(2) IN GENERAL.** Except as provided in subs. (3) to (5):

15 (a) A public utility may not engage in an activity related to the sale or service
16 of appliances.

17 (b) A public utility may engage in the performance of an energy conservation,
18 plumbing, electrical, heating, ventilating, air conditioning or sheet metalworking
19 contracting service only if the service is performed in or on real property in which the
20 public utility has an ownership or leasehold interest or in or on real property,
21 excluding an improvement, in which the public utility has an easement.

22 **(3) EMERGENCY APPLIANCE SERVICE WORK.** A public utility shall engage in
23 appliance service work in response to circumstances that reasonably appear to the
24 public utility to endanger property or human health or life. The commission shall

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1 promulgate rules setting standards for a public utility to use in determining whether
2 property or human health or life is endangered.

3 (4) FEDERAL LAW. A public utility may engage in activities required under
4 federal law.

5 (5) CONTRACTS OR ARRANGEMENTS WITH AFFILIATED INTERESTS. A public utility
6 may provide services to an affiliated interest pursuant to a contract or arrangement
7 approved under s. 196.52.

8 **SECTION 3.** 196.374 (1) of the statutes is amended to read:

9 196.374 (1) In this section “utility” means a class A gas or electric utility, as
10 defined by the commission. Every utility shall spend annually at least 0.5% of its
11 total annual operating revenues on programs designed to promote and accomplish
12 energy conservation. The commission may require a utility to spend annually for the
13 purpose of promoting and accomplishing energy conservation, an amount which is
14 more or less than 0.5% of its annual operating revenues if, after notice and hearing,
15 the commission finds that the expenditure of such amount is in the public interest.
16 Except as provided in s. 196.035 (2) (b), a utility or an affiliated interest of a utility,
17 as defined in s. 196.52 (1), may not provide energy conservation services to
18 consumers, either directly or through a contract or any other arrangement with
19 another person. Programs under this section shall promote energy conservation
20 services by persons that are not public utilities or affiliated interests of public
21 utilities.

22 **SECTION 4.** 196.52 (3) (a) of the statutes is amended to read:

23 196.52 (3) (a) In this subsection, “contract or arrangement” means a contract
24 or arrangement providing for the furnishing of management, supervisory,
25 construction, engineering, accounting, legal, financial, research, development or

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1 similar services and any contract or arrangement for the purchase, sale, lease or
2 exchange of any property, right, or thing, or for the furnishing of any service,
3 property, right, or thing, other than management, supervisory, construction,
4 engineering, accounting, legal, financial or similar services.

5 (am) Except as provided under par. (b), unless and until the commission gives
6 its written approval, any contract or arrangement is not valid or effective if the
7 contract or arrangement is made between a public utility and an affiliated interest
8 after June 7, 1931. Every public utility shall file with the commission a verified copy
9 of any contract or arrangement, a verified summary of any unwritten contract or
10 arrangement, and any contract or arrangement, written or unwritten, which was in
11 effect on June 7, 1931. The commission ~~shall~~ may approve a contract or arrangement
12 made or entered into after June 7, 1931, only if it ~~shall clearly appear and be~~
13 ~~established upon~~ all of the following conditions are met:

14 2. After investigation, it is established that it the contract or arrangement is
15 reasonable and consistent with the public interest and does result in a violation of
16 s. 196.795 (5) (f). The commission may not approve any contract or arrangement
17 unless satisfactory proof is submitted to the commission of the cost to the affiliated
18 interest of rendering the services or of furnishing the property or service to each
19 public utility or of the cost to the public utility of rendering the services or of
20 furnishing the property or service to each affiliated interest. No proof is satisfactory
21 under this paragraph subdivision unless it includes the original (or verified copies)
22 of the relevant cost records and other relevant accounts of the affiliated interest, or
23 an abstract of the records and accounts or a summary taken from the records and
24 accounts if the commission deems the abstract or summary adequate. The accounts
25 shall be properly identified and duly authenticated. The commission, where

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1 reasonable, may approve or disapprove a contract or arrangement without
2 submission of the cost records or accounts.

3 **SECTION 5.** 196.52 (3) (am) 1. of the statutes is created to read:

4 196.52 (3) (am) 1. If the contract or arrangement involves an activity related
5 to the sale or service of appliances, as defined in s. 196.795 (1) (b), or the performance
6 of energy conservation, plumbing, electrical, heating, ventilating, air conditioning or
7 sheet metalworking contracting services, the activity or service is performed in or on
8 real property in which the public utility has an ownership or leasehold interest or in
9 or on real property, excluding an improvement, in which the public utility has an
10 easement.

11 **SECTION 6.** 196.52 (3) (b) 1. of the statutes is amended to read:

12 196.52 (3) (b) 1. The requirement for written approval under par. ~~(a)~~ (am) shall
13 not apply to ~~any~~ a contract or arrangement that is not specified in par. (am) 1. if the
14 amount of consideration involved is not in excess of \$25,000 or 5% of the equity of the
15 public utility, whichever is smaller, and does not apply to a telecommunications
16 utility contract or arrangement. Regularly recurring payments under a general or
17 continuing arrangement which aggregate a greater annual amount may not be
18 broken down into a series of transactions to come within the exemption under this
19 paragraph. Any transaction exempted under this paragraph shall be valid or
20 effective without commission approval under this section.

21 **SECTION 7.** 196.52 (3) (c) 1. of the statutes is amended to read:

22 196.52 (3) (c) 1. May not waive the requirement of the submission of cost
23 records or accounts under par. ~~(a)~~ (am);

24 **SECTION 8.** 196.52 (3) (c) 2. of the statutes is amended to read:

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1 196.52 (3) (c) 2. Shall review the accounts of the affiliated interest as they relate
2 to the contract or arrangement prior to the commission approving or disapproving
3 the contract or arrangement under par. (a) ~~(a)~~ (am); and

4 **SECTION 9.** 196.52 (3) (d) of the statutes is created to read:

5 196.52 (3) (d) Within 18 months after the effective date of this paragraph ...
6 [revisor inserts date], each public utility and affiliated interest that have entered
7 into a contract or arrangement specified in par. (am) 1. before the effective date of this
8 paragraph ... [revisor inserts date], shall terminate the contract or arrangement.

9 **SECTION 10.** 196.52 (4) (a) of the statutes is amended to read:

10 196.52 (4) (a) In any proceeding, whether upon the commission's own motion
11 or upon application or complaint, involving the rates or practices of any public utility,
12 the commission may exclude from the accounts of the public utility any payment or
13 compensation to or from an affiliated interest for any services rendered or property
14 or service furnished under an existing contract or arrangement with an affiliated
15 interest under sub. (3) ~~(a)~~ (am) unless the public utility establishes the
16 reasonableness of the payment or compensation.

17 **SECTION 11.** 196.59 of the statutes is repealed.

18 **SECTION 12.** 196.795 (1) (b) of the statutes is amended to read:

19 196.795 (1) (b) "Appliance" means any equipment, device or system used
20 directly for lighting, cooking, drying, water tempering, space heating, space cooling
21 or space ventilation. ~~"Appliance" does not include equipment or devices which
22 monitor or control the primary energy supply or source for any equipment used
23 directly for cooking, drying, water tempering, space heating, space cooling or space
24 ventilation.~~

25 **SECTION 13.** 196.795 (5) (dr) of the statutes is repealed.

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1 **SECTION 14.** 196.795 (5) (f) of the statutes is amended to read:

2 196.795 **(5)** (f) No nonutility activity of any holding company or nonutility
3 affiliate may be subsidized ~~materially~~ by the consumers of any public utility affiliate
4 with which the holding company or nonutility affiliate is in the holding company
5 system. No public utility activity of any holding company or public utility affiliate
6 may be subsidized ~~materially~~ by the nonutility activities of the holding company or
7 any of its nonutility affiliates.

8 **SECTION 15.** 196.795 (5) (q) 1. (intro.) of the statutes is amended to read:

9 196.795 **(5)** (q) 1. (intro.) No nonutility affiliate or joint venture or partnership
10 with a nonutility affiliate as a member or partner may, in the service territory of a
11 public utility affiliate with which it is in a holding company system, sell at retail,
12 lease, install, maintain or service any appliance that uses as its primary energy
13 source energy supplied by that public utility affiliate under rates and tariffs
14 approved by the commission, if the appliance is, or is intended to be, located in any
15 building used ~~primarily for residential occupancy or in any commercial building~~
16 ~~unless the building is~~ that is not owned or operated by the holding company or by its
17 nonutility affiliates ~~or~~, unless the commission determines, after notice and hearing,
18 that the selling at retail, leasing, installing, maintaining or servicing of the appliance
19 will not do any of the following:

20 **SECTION 16.** 196.795 (5) (q) 2. (intro.) of the statutes is renumbered 196.795 (5)
21 (q) 2. and amended to read:

22 196.795 **(5)** (q) 2. ~~Except as provided under subd. 3., no~~ No public utility
23 affiliate or its subsidiary or joint venture or partnership having a utility affiliate or
24 its subsidiary as a member or partner may, ~~in the service territory of the public utility~~
25 ~~affiliate~~, sell at retail, lease, install, maintain or service any appliance that uses as

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1 its primary energy source energy supplied by that public utility affiliate ~~under rates~~
2 ~~and tariffs approved by the commission~~, unless the appliance is located in facilities
3 owned or operated by that public utility affiliate or its subsidiary ~~or unless the~~
4 ~~appliance is sold, leased, installed, maintained or serviced.~~

5 **SECTION 17.** 196.795 (5) (q) 2. a. of the statutes is repealed.

6 **SECTION 18.** 196.795 (5) (q) 2. b. of the statutes is repealed.

7 **SECTION 19.** 196.795 (5) (q) 2. c. of the statutes is repealed.

8 **SECTION 20.** 196.795 (5) (q) 3. of the statutes is repealed.

9 **SECTION 21.** 196.795 (7) (a) 2. of the statutes is repealed.

10 **SECTION 22.** 196.795 (7) (a) 3. of the statutes is amended to read:

11 196.795 (7) (a) 3. Conduct a business that is functionally related to ~~the~~
12 ~~provision of utility service or to~~ the development or acquisition of energy resources.

13 **SECTION 23.** 196.795 (9m) of the statutes is amended to read:

14 196.795 (9m) (title) PRIVATE CAUSE OF ACTION AND FORFEITURE. Any company in
15 a holding company system which does, causes or permits to be done any prohibited
16 action under sub. (5) (c) to ~~(d)~~ (dm), (f), (h), (k), (n), (q), (r) or (s), or fails to comply
17 with any term, limitation or condition imposed under sub. (2) (e) or (f) consistent with
18 sub. (5) (c) to ~~(d)~~ (dm), (f), (h), (k), (n), (q), (r) or (s), is liable to any person injured
19 thereby in treble the amount of damages sustained in consequence of the prohibited
20 action or failure to act and shall forfeit \$2,000 for each violation or failure to comply.
21 Each day of violation or failure to comply is a separate violation or failure to comply.

22 **SECTION 24.** 198.12 (5) of the statutes is amended to read:

23 198.12 (5) CHAPTER 196 APPLIES. Any utility operated by a district shall be held
24 to be a "public utility" within the meaning of that term as used in and subject to ss.
25 196.01 to 196.53 and ~~196.59~~ 196.595 to 196.76.

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1 **SECTION 25.** 198.12 (6) of the statutes is amended to read:

2 198.12 **(6)** UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF
3 SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire
4 and, subject to the restrictions applying to a municipality under s. 196.50 (4), to
5 construct any utility or portion thereof to operate, in whole or in part, in the district,
6 and to own, acquire and, subject to ss. 196.01 to 196.53 and ~~196.59~~ 196.595 to 196.76
7 where applicable, to construct any addition to or extension of any such utility, and
8 to own, acquire and construct any water power and hydroelectric power plant, within
9 or without the district, to be operated in connection with any such utility, and to
10 operate, maintain and conduct such utility and water power and hydroelectric power
11 plant and system both within and without the district, and to furnish, deliver and
12 sell to the public and to any municipality and to the state and any state institution
13 heat, light and power service and any other service, commodity or facility which may
14 be produced or furnished thereby, and to charge and collect rates, tolls and charges
15 for the same. For said purposes the district is granted and shall have and exercise
16 the right freely to use and occupy any public highway, street, way or place reasonably
17 necessary to be used or occupied for the maintenance and operation of such utility
18 or any part thereof, subject, however, to such local police regulations as may be
19 imposed by any ordinance adopted by the governing body of the municipality in
20 which such highway, street, way or place is located.

21 **SECTION 26. Initial applicability.**

22 (1) CONTRACTS OR ARRANGEMENTS WITH AFFILIATES. The treatment of section
23 196.52 (3) (a) and (am) 1. of the statutes first applies to contracts or arrangements
24 entered into, renewed, extended or modified on the effective date of this subsection.

